

Leland Eugene Backus, Esq.  
 Nevada State Bar No. 473  
**BACKUS, CARRANZA & BURDEN**  
 3050 S. Durango Drive  
 Las Vegas, NV 89117  
 Tele: (702) 872-5555  
 Fax: (702) 872-5545  
gbackus@backuslaw.com

*Attorneys for Defendant*  
*Cincinnati Insurance Company*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

D.R. HORTON, INC. a Delaware corporation,  
  
 Plaintiff,

vs.

LIBERTY MUTUAL FIRE INSURANCE  
 COMPANY, a foreign corporation; NATIONAL  
 FIRE & MARINE INSURANCE COMPANY, a  
 foreign corporation; WAUSAU BUSINESS  
 INSURANCE, a foreign corporation;  
 TRAVELERS INDEMNITY COMPANY, a  
 foreign corporation; ARCH EXCESS AND  
 SURPLUS INSURANCE COMPANY, a foreign  
 corporation; AMERICAN HOME ASSURANCE  
 COMPANY, a foreign corporation;  
 COMMERCE AND INDUSTRY INSURANCE  
 COMPANY, a foreign corporation; ZURICH  
 AMERICAN INSURANCE COMPANY;  
 ILLINOIS UNION INSURANCE COMPANY, a  
 foreign corporation; OLD REPUBLIC  
 INSURANCE COMPANY, a foreign  
 corporation; FIRST SPECIALTY INSURANCE  
 COMPANY, a foreign corporation;  
 LEXINGTON INSURANCE COMPANY, a  
 foreign corporation; WESTCHESTER SURPLUS  
 LINES INSURANCE COMPANY, a foreign  
 corporation; AMERICAN SAFETY  
 INDEMNITY COMPANY, a foreign  
 corporation; BURLINGTON INSURANCE

Case No.:

**NOTICE OF REMOVAL BY**  
**DEFENDANT CINCINNATI**  
**INSURANCE COMPANY**

COMPANY, a foreign corporation; AMERICAN )  
 & FOREIGN INSURANCE COMPANY, a )  
 foreign corporation; CINCINNATI INSURANCE )  
 COMPANY, a foreign corporation; ARCH )  
 SPECIALTY INSURANCE COMPANY, a )  
 foreign corporation; ST. PAUL FIRE & )  
 MARINE INSURANCE COMPANY, a foreign )  
 corporation; SCOTTSDALE INSURANCE, a )  
 foreign corporation; ACE AMERICAN )  
 INSURANCE COMPANY, a foreign )  
 corporation; FIRST MERCURY INSURANCE )  
 COMPANY, a foreign corporation; DOES I-X; )  
 ROE CORPORATIONS I-X, )  
 )  
 Defendants. )  
 )

Defendant, Cincinnati Insurance Company, an Ohio corporation, having diversity from the Plaintiff, D.R. Horton, Inc., an alleged Delaware corporation does hereby through its counsel of record, Leland Eugene Backus, Esq. of Backus, Carranza & Burden pursuant to 28 U.S.C. §§ 1441, 1446 provide notice of removal of this civil action from the Eighth Judicial District Court, Clark County, Nevada bearing state case no. A-10-631260-C.

1. Cincinnati Insurance Company is a wholly owned subsidiary of Cincinnati Financial Corporation and is incorporated in the State of Ohio.

2. Plaintiff, D.R. Horton, Inc. is alleged to be incorporated in the State of Delaware.

3. No place of incorporation is alleged for the other insurance companies that are named as parties to this action.

4. On December 29, 2010, the Commissioner of Insurance for the Department of Business and Industry Division of Insurance for the State of Nevada forwarded a Summons, Complaint, and Initial Appearance Fee Disclosure indicating they were delivered to the Commissioner of Insurance on December 20, 2010 pursuant to NRS 680A.260. Copies of each of these documents are attached hereto as Exhibits A, B, C and D respectively.

1           5.       This notice is being provided in accordance with 28 U.S.C. §1466(a) and 28  
2 U.S.C. §1332.

3           6.       Defendant, Cincinnati Insurance Company, is informed and believes, and  
4 thereupon alleges, that no other proceedings or papers have been filed in said state court action  
5 at the time of this Notice of Removal.

6           7.       This civil action is one in which this United States District Court has original  
7 jurisdiction under the provisions of 28 U.S.C. §1332(a). Plaintiff is now and at the time the  
8 state action was commenced a citizen of the State of Delaware and Defendant Cincinnati  
9 Insurance Company is a citizen of the State of Ohio. The matter in controversy exceeds the sum  
10 of \$75,000. No change of citizenship of parties has occurred since the commencement of the  
11 action. This Defendant is not a citizen of the state in which this action was brought, to wit:  
12 Nevada.

13           8.       The action arises out of a very large constructional defect civil action for defects  
14 at a development called the Court at Aliante located in Southern Nevada.

15           9.       The underlying constructional defect action was commenced on September 6,  
16 2006 by Court at Aliante Homeowners Association against D.R. Horton, Inc. and bears case no.  
17 A527641.

18           10.      In *Court at Aliante Homeowners Association v. D. R. Horton, Inc.* damages are  
19 being sought well in excess of \$75,000 for which D.R. Horton in this present action seeks  
20 indemnity from various insurers.

21           11.      A copy of this Notice of Removal will be filed with the Clerk of the Eighth  
22 Judicial District Court in case no. A-10-631260-C as required by 28 U.S.C. §1446(d).

23           12.      Copies of all pleadings served upon this Defendant are in Exhibits A, B, C and  
24 D.

13. Defendant will give written notice of the filing of this notice as required by 28 U.S.C. § 1446(d).

DATED this 15 day of January, 2011.

**BACKUS, CARRANZA & BURDEN**



Leland Eugene Backus, Esq.  
3050 South Durango Drive  
Las Vegas, Nevada 89117  
*Attorneys for Defendant*  
*Cincinnati Insurance Company*

By signing this notice of removal, Leland Eugene Backus, Esq. pursuant to 28 U.S.C. §1446(a) and Fed.R.Civ.P. Rule 11(b) certifies that to the best of his knowledge, information, and belief, formed after an inquiry reasonable under these circumstances that (1) the paper is not being presented for any improper purposes; (2) the claims, defenses, and other legal contentions in the paper are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

**CERTIFICATE OF SERVICE**

In accordance with Civ. R. 5 and LR 5, on January 12, 2011, I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

**VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

**VIA FACSIMILE:** by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

**BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

**BY E-MAIL:** by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

**BY CM/ECF SYSTEM:** by transmitting via the United States District Court's CM/ECF System to the following individuals for which such service is designated on the Service List.

**SERVICE LIST**

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
Jack C. Juan, Esq. Shane W. Clayton, Esq. MARQUIS & AURBACH 10001 Park Run Drive Las Vegas, NV 89145	Plaintiff	<input type="checkbox"/> CM/ECF service <input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input checked="" type="checkbox"/> Mail service

1 I declare that under penalty of perjury under the laws of the State of Nevada that the  
2 above is true and correct. I further declare that I am employed in the office of a member of the  
3 bar of this court at whose direction the service was made.

4  
5   
6 An employee of BACKUS, CARRANZA & BURDEN  
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# **Exhibit A**



JIM GIBBONS  
Governor

STATE OF NEVADA

BRETT J. BARRATT  
Commissioner of Insurance

DIANNE CORNWALL  
Director



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

December 29, 2010

2501 E. Sahara Avenue, No. 302

Las Vegas, Nevada 89104

(702) 486-4009 • Fax (702) 486-4007

E-mail: [insinfo@doi.nv.gov](mailto:insinfo@doi.nv.gov)

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

# 7010 1870 0003 0187 8029

CINCINNATI INSURANCE COMPANY  
PO BOX 145496  
CINCINNATI OHIO 45250

Re: Case No. A10631260  
Case Name: D.R. Horton, Inc. v. Liberty Mut. Fire Ins. Co.

Dear Agent:

The enclosed Summons, Complaint, and Initial Appearance Fee Disclosure in the matter referenced above, were delivered to the office of the Commissioner of Insurance, on December 20, 2010, in accordance with NRS 680A.260. To complete service of process, we are forthwith mailing by certified mail one of the copies of such process to you, the person designated by the insurer to receive such.

Also enclosed herein is a true and correct copy of the Proof of Service in this matter dated December 29, 2010, and a copy of our letter to Plaintiff's counsel, dated December 29, 2010.

You have 30 days from the date of this service to respond.

If you have any questions regarding this service, please do not hesitate to contact us.

Cordially yours,  
BRETT J. BARRATT  
Commissioner of Insurance

Marilyn Brasfield  
Service of Process Clerk  
Telephone: (702) 486-4060  
Email: [mbrasfield@doi.state.nv.us](mailto:mbrasfield@doi.state.nv.us)  
Enclosures

A large, stylized handwritten signature in black ink, appearing to read "Marilyn Brasfield", is written over the typed name and contact information.



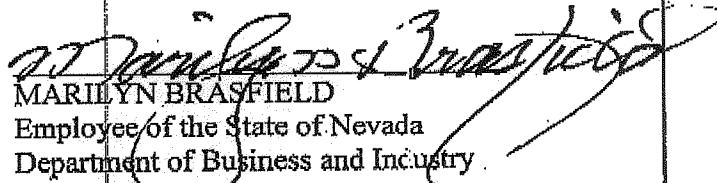
**PROOF OF SERVICE**

I hereby declare that on this day I served a copy of the Summons, Complaint, and Initial Appearance Fee Disclosure upon defendant **CINCINNATI INSURANCE COMPANY** in the within entitled matter, by mailing a copy thereof, properly addressed with postage prepaid, certified mail, return receipt requested, to the following:

**PO BOX 145496  
CINCINNATI OHIO 45250**

I declare, under penalty of perjury, that the foregoing is true and correct.

**DATED** this 29<sup>th</sup> day of December, 2010.

  
**MARILYN BRASFIELD**  
Employee of the State of Nevada  
Department of Business and Industry  
Division of Insurance

Court: Eighth Judicial District Court, Clark County, Nevada  
Case Name: D.R. Horton, Inc. v. Liberty Mut. Fire Ins. Co.  
Case No. A10631260  
Certified Receipt No. 7010 1870 0003 0187 8029

Date 12-29-10

JIM GIBBONS  
Governor

STATE OF NEVADA

BRETT J. BARRATT  
Commissioner of Insurance

DIANNE CORNWALL  
Director



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

2501 E. Sahara Avenue, No. 302

Las Vegas, Nevada 89104

(702) 486-4009 • Fax (702) 486-4007

E-mail: [insinfo@doi.nv.gov](mailto:insinfo@doi.nv.gov)

December 29, 2010

SHANE W. CLAYTON, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NV 89145

Re: Case No. A10631260  
Case Name: D.R. Horton, Inc. v. Liberty Mut. Fire Ins. Co.

Dear Mr. Clayton:

On December 20, 2010, the Summons, Complaint, and Initial Appearance Fee Disclosure in the matter referenced above were delivered to the office of the Commissioner of Insurance.

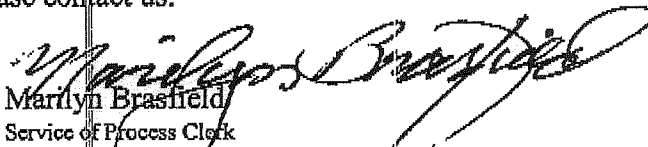
To complete service of process, we have forthwith mailed by certified mail one copy of such documents in the matter referenced above to the entity currently designated by the insurer to receive such process. We are forwarding to you by first class mail the following:

1. A receipt in the amount of \$660.00, for twenty-two services at \$30.00 each.
2. A copy of our letter to the insurance company, dated December 29, 2010.
3. The original Proof of Service, dated December 29, 2010, and served upon CINCINNATI INSURANCE COMPANY.

Please be aware that all documents after initial Service of Process may be served directly to the party. See NRS 680A.260, 685A.200 and 685B.050.

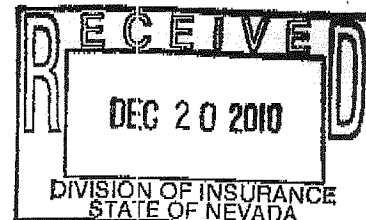
If you have any questions regarding this service, please contact us.

Cordially yours,  
BRETT J. BARRATT  
Commissioner of Insurance  
Enclosures

  
Marilyn Brasfield  
Service of Process Clerk  
Telephone: 702.486.4060  
Email: [mbrasfield@doi.state.nv.us](mailto:mbrasfield@doi.state.nv.us)

# **Exhibit B**

1 Marquis & Aurbach  
 JACK C. JUAN, ESQ.  
 2 Nevada Bar No. 6367  
 SHANE W. CLAYTON, ESQ.  
 3 Nevada Bar No. 8783  
 10001 Park Run Drive  
 4 Las Vegas, Nevada 89145  
 Telephone: (702) 382-0711  
 5 Facsimile: (702) 382-5816  
jjuan@marquisaurbach.com  
 6 sclayton@marquisaurbach.com  
 Attorneys for Plaintiff



7  
 8 DISTRICT COURT  
 9 CLARK COUNTY, NEVADA

10 D.R. HORTON, INC., a Delaware corporation,

11 Plaintiff,

Case No.: A-10-631260-C

Dept. No.: XXIII

12 vs.

13 LIBERTY MUTUAL FIRE INSURANCE  
 COMPANY, a foreign corporation; NATIONAL  
 14 FIRE & MARINE INSURANCE COMPANY, a  
 foreign corporation; WAUSAU BUSINESS  
 15 INSURANCE, a foreign corporation;  
 TRAVELERS INDEMNITY COMPANY, a  
 16 foreign corporation; ARCH EXCESS AND  
 SURPLUS INSURANCE COMPANY, a foreign  
 17 corporation; AMERICAN HOME ASSURANCE  
 COMPANY, a foreign corporation;  
 18 COMMERCE AND INDUSTRY INSURANCE  
 COMPANY, a foreign corporation; ZURICH  
 19 AMERICAN INSURANCE COMPANY;  
 ILLINOIS UNION INSURANCE COMPANY, a  
 20 foreign corporation; OLD REPUBLIC  
 INSURANCE COMPANY, a foreign  
 21 corporation; FIRST SPECIALTY INSURANCE  
 COMPANY, a foreign corporation;  
 22 LEXINGTON INSURANCE COMPANY, a  
 foreign corporation; WESTCHESTER  
 23 SURPLUS LINES INSURANCE COMPANY, a  
 foreign corporation; AMERICAN SAFETY  
 24 INDEMNITY COMPANY, a foreign  
 corporation; BURLINGTON INSURANCE  
 25 COMPANY, a foreign corporation; AMERICAN  
 & FOREIGN INSURANCE COMPANY, a  
 26 foreign corporation; CINCINNATI  
 INSURANCE COMPANY, a foreign  
 27 corporation; ARCH SPECIALTY INSURANCE  
 COMPANY, a foreign corporation; ST. PAUL  
 28 FIRE & MARINE INSURANCE COMPANY, a  
 foreign corporation; SCOTTSDALE

SUMMONS - CINCINNATI INSURANCE  
 COMPANY

INSURANCE, a foreign corporation; ACE  
AMERICAN INSURANCE COMPANY, a  
foreign corporation; FIRST MERCURY  
INSURANCE COMPANY, a foreign  
corporation; DOES I - X; ROE  
CORPORATIONS I - X,

Defendants.

### SUMMONS - CIVIL

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
READ THE INFORMATION BELOW.**

### **CINCINNATI INSURANCE COMPANY**

**TO THE DEFENDANT(S):** A civil Complaint has been filed by the Plaintiff(s) against  
you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served  
on you, exclusive of the day of service, you must do the following:
  - (a) File with the Clerk of this Court, whose address is shown below, a formal  
written response to the Complaint in accordance with the rules of the  
Court, with the appropriate filing fee.
  - (b) Serve a copy of your response upon the attorney whose name and address  
is shown below.
2. Unless you respond, your default will be entered upon application of the  
Plaintiff(s) and failure to so respond will result in a judgment of default against  
you for the relief demanded in the Complaint, which could result in the taking of  
money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so  
promptly so that your response may be filed on time.

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1 4. The State of Nevada, its political subdivisions, agencies, officers, employees,  
2 ~~board members, commission members and legislators each have 45 days after~~  
3 service of this Summons within which to file an Answer or other responsive  
4 pleading to the Complaint.

5 STEVEN D. GRIERSON  
6 CLERK OF COURT

7 By: DeEVRA KNIGHT  
8 Deputy Clerk  
9 Regional Justice Center  
10 200 Lewis Avenue  
11 Las Vegas, NV 89155



17 2010  
Date

11 Issued at the direction of:

12 MARQUIS & AURBACH

13  
14 By 

15 Jack C. Juan, Esq.  
16 Nevada Bar No. 6367  
17 Shane W. Clayton, Esq.  
18 Nevada Bar No. 8783  
19 10001 Park Run Drive  
20 Las Vegas, Nevada 89145  
21 Attorney(s) for Plaintiff  
22  
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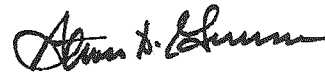
MARQUIS & AURBACH

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

# Exhibit C



Electronically Filed  
12/10/2010 04:09:21 PM



CLERK OF THE COURT

1 **Marquis & Aurbach**  
2 JACK C JUAN, ESQ.  
3 Nevada Bar No. 6367  
4 SHANE W. CLAYTON, ESQ.  
5 Nevada Bar No. 8783  
6 10001 Park Run Drive  
7 Las Vegas, Nevada 89145  
8 Telephone: (702) 382-0711  
9 Facsimile: (702) 382-5816  
10 jjuan@marquisaurbach.com  
11 sclayton@marquisaurbach.com  
12 Attorneys for Plaintiff

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 D.R. HORTON, INC., a Delaware corporation,

11 Plaintiff,

12 vs.

Case No.: A-10-631260-C

Dept. No.: XXIII

13 LIBERTY MUTUAL FIRE INSURANCE  
14 COMPANY, a foreign corporation; NATIONAL  
15 FIRE & MARINE INSURANCE COMPANY, a  
16 foreign corporation; WAUSAU BUSINESS  
17 INSURANCE, a foreign corporation;  
18 TRAVELERS INDEMNITY COMPANY, a  
19 foreign corporation; ARCH EXCESS AND  
20 SURPLUS INSURANCE COMPANY, a foreign  
21 corporation; AMERICAN HOME ASSURANCE  
22 COMPANY, a foreign corporation;  
23 COMMERCE AND INDUSTRY INSURANCE  
24 COMPANY, a foreign corporation; ZURICH  
25 AMERICAN INSURANCE COMPANY;  
26 ILLINOIS UNION INSURANCE COMPANY, a  
27 foreign corporation; OLD REPUBLIC  
28 INSURANCE COMPANY, a foreign  
corporation; FIRST SPECIALTY INSURANCE  
COMPANY, a foreign corporation;  
LEXINGTON INSURANCE COMPANY, a  
foreign corporation; WESTCHESTER  
SURPLUS LINES INSURANCE COMPANY, a  
foreign corporation; AMERICAN SAFETY  
INDEMNITY COMPANY, a foreign  
corporation; BURLINGTON INSURANCE  
COMPANY, a foreign corporation; AMERICAN  
& FOREIGN INSURANCE COMPANY, a  
foreign corporation; CINCINNATI  
INSURANCE COMPANY, a foreign  
corporation; ARCH SPECIALTY INSURANCE  
COMPANY, a foreign corporation; ST. PAUL  
FIRE & MARINE INSURANCE COMPANY, a

**COMPLAINT**

**ARBITRATION EXEMPTION  
REQUESTED: DECLARATORY RELIEF  
SOUGHT**

**MARQUIS & AURBACH**

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

1 foreign corporation; SCOTTSDALE  
2 INSURANCE, a foreign corporation; ACE  
3 AMERICAN INSURANCE COMPANY, a  
4 foreign corporation; FIRST MERCURY  
INSURANCE COMPANY, a foreign  
corporation; DOES I – X; ROE  
CORPORATIONS I – X,

5 Defendants.

6  
7 **COMPLAINT**

8 Plaintiff, D.R. Horton Inc. (DRH), through the law firm of Marquis & Aurbach,  
9 complains against the Defendants and alleges as follows:

10 **THE PARTIES**

11 1. DRH is a Delaware corporation, doing business throughout the United States,  
12 including Nevada.

13 2. National Fire and Marine Insurance Company (NFM) is a foreign corporation,  
14 doing business throughout the United States, including Nevada.

15 3. Liberty Mutual Fire Insurance Company (Liberty Mutual) is a foreign corporation  
16 and was at all times relevant hereto, issuing policies and conducting business in Nevada.

17 4. Wausau Business Insurance Company (Wausau) is a foreign corporation and was  
18 at all times relevant hereto, issuing policies and conducting business in Nevada.

19 5. Wausau and Liberty Mutual will be collectively referred to as Liberty Mutual  
20 herein.

21 6. Travelers Indemnity Company (Travelers) is a foreign corporation and was at all  
22 times relevant hereto, issuing policies and conducting business in Nevada.

23 7. St. Paul Fire & Marine Insurance Company (St. Paul) is a foreign corporation and  
24 was at all times relevant hereto, issuing policies and conducting business in Nevada.

25 8. Both Travelers and St. Paul will collectively be referred to herein as Travelers.

26 9. American Home Assurance Company (American Home) is a foreign corporation  
27 and was at all times relevant hereto, issuing policies and conducting business in Nevada.

28 ///

MARQUIS & AURBACH

10001 Park Run Drive

Las Vegas, Nevada 89145

(702) 382-0711 FAX: (702) 382-5816

MARQUIS & AURBACH

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

10. Commerce and Industry Insurance (Commerce) is a foreign corporation and was at all times relevant hereto, issuing policies and conducting business in Nevada.

11. Lexington Insurance Company (Lexington) is a foreign corporation and was at all times relevant hereto, issuing policies and conducting business in Nevada.

12. American Home, Lexington and Commerce will be collectively referred to as AIG herein.

13. Arch Excess and Surplus Insurance (Arch) is a foreign corporation and was at all times relevant hereto, issuing policies and conducting business in Nevada.

14. Arch Specialty Insurance Company (Arch Specialty) is a foreign corporation and was at all times relevant hereto, issuing policies and conducting business in Nevada.

15. Both Arch and Arch Specialty will collectively be referred to herein as Arch.

16. Zurich American Insurance (Zurich) is a foreign corporation and was at all times relevant hereto, issuing policies and conducting business in Nevada.

17. Illinois Union Insurance Company (Illinois Union) is a foreign corporation and was at all times relevant hereto, issuing policies and conducting business in Nevada.

18. Old Republic Insurance Company (Old Republic) is a foreign corporation and was at all times relevant hereto, issuing policies and conducting business in Nevada.

19. First Specialty Insurance Company (First Specialty) is a foreign corporation and was at all times relevant hereto, issuing policies and conducting business in Nevada.

20. Westchester Surplus Lines Insurance Company (Westchester) is a foreign corporation and was at all times relevant hereto, issuing policies and conducting business in Nevada.

21. American Safety Indemnity Company (American Safety) is a foreign corporation and was at all times relevant hereto, issuing policies and conducting business in Nevada.

22. Burlington Insurance Company (Burlington) is a foreign corporation and was at all times relevant hereto, issuing policies and conducting business in Nevada.

///

///

MARQUIS & AURBACH

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

1 23. American & Foreign Insurance Company (American & Foreign) is a foreign  
2 corporation and was at all times relevant hereto, issuing policies and conducting business in  
3 Nevada.

4 24. Cincinnati Insurance Company (Cincinnati) is a foreign corporation and was at all  
5 times relevant hereto, issuing policies and conducting business in Nevada.

6 25. Scottsdale Insurance Company (Scottsdale) is a foreign corporation and was at all  
7 times relevant hereto, issuing policies and conducting business in Nevada.

8 26. Ace American Insurance Company is a foreign corporation and was at all times  
9 relevant hereto, issuing policies and conducting business in Nevada.

10 27. First Mercury Insurance Company is a foreign corporation and was at all times  
11 relevant hereto, issuing policies and conducting business in Nevada.

12 28. All of the defendants herein will collectively be referred to herein as "the  
13 carriers."

14 29. The true names and capacities whether individual, corporate, associate or  
15 otherwise of Defendants named herein as DOES I through X, inclusive, and ROE  
16 CORPORATIONS I through X, inclusive are unknown to Plaintiff. Said DOE and ROE  
17 Defendants are responsible for damages suffered by Plaintiff. Therefore, Plaintiff sues said  
18 Defendants by such fictitious names. Plaintiff will ask leave to amend this Complaint to show  
19 the true names and capacities of each DOE and ROE Defendants at such time as the same has  
20 been ascertained.

### 21 THE PROJECT

22 30. DRH contracted with various subcontractors for the construction of residences in  
23 the Court at Aliante development located in Clark County, Nevada.

24 31. On or about November 17, 2006, homeowners in the Court at Aliante  
25 development (hereinafter "the homeowners") served a Notice on DRH pursuant to Chapter 40 of  
26 the Nevada Revised Statutes, alleging construction defects in their residences.

27 ///

28 ///



**MARQUIS & AURBACH**

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

1           32. This and other Chapter 40 Notices, as well as the subsequent lawsuit filed by the  
2 homeowners, implicates the work of the subcontractors listed herein, to whom the carriers issued  
3 the insurance policies.

4           33. The homeowners served subsequent notices on DRH as well, which DRH has  
5 responded to by performing repairs pursuant to Chapter 40 of the Nevada Revised Statutes.

6           34. Pursuant to their promise, contractual obligation and agreement with DRH, these  
7 contractors agreed to, among other things, the following:

8           3. Performance of Work. Contractor's acceptance/commencement of  
9 the Work shall be deemed as Contractor's agreement to complete the Work by the  
10 completion date specified by an authorized Horton employee and Contractor's  
11 acknowledgment that Contractor has inspected the job location and approves of  
12 the requirements so specified. Contractor acknowledges that TIME IS OF THE  
13 ESSENCE in the performance of all Work. Contractor shall coordinate with  
14 Horton all Work scheduled and cooperate with other contractors. Contractor shall  
15 perform all Work in a good and workmanlike manner, in accordance with the  
16 plans and specifications of Horton, according to industry standard practices, and  
17 warrants that all work will meet or exceed FHA minimum property standards, VA  
18 requirements and any applicable building code requirements. All Work shall be  
19 performed to the satisfaction of Horton. Contractor acknowledges that Contractor  
20 is thoroughly familiar with the plans and specifications as such plans and  
21 specifications affect the Work and materials herein contracted for. Contractor  
22 shall be responsible for inspecting any work of another contractor that may affect  
23 Contractor's own Work, and shall report in writing to Horton any defects prior to  
24 commencement of any Work, or Contractor shall be deemed to have accepted  
25 such work for inclusion into Contractor's Work. Contractor shall secure and  
26 maintain all permits, licenses and approvals necessary for or applicable to the  
27 performance of the Work hereunder. When Horton orders in writing, Contractor  
28 shall make any and all changes in the Work as directed by Horton's authorized  
representative, and adjustments to the prices shall be made only in accordance  
with a "Variance to Purchase Order" signed by Horton and Contractor prior to the  
commencement of such changes.

8. Warranties. Contractor warrants to Horton and the purchaser (and  
subsequent owners) of the residence to which the Work relates (herein collectively  
referred to as the "Homeowner") that all labor performed and materials furnished  
by Contractor shall conform to the specifications of this Agreement, be of good  
quality and free of faults expressly warrants that the Work shall remain free of  
defect for a period of at least two (2) years from the date of purchase by  
Homeowner, with an extended warranty of ten (10) years for foundation systems,  
beams, girders, lintels, columns, wall, partitions, floor systems, and roof framing  
systems (caused by failure of load bearing systems) from the date that Horton  
conveys to the Homeowner the structure in which the Work has been  
incorporated, and shall meet or exceed FHA minimum property standards, VA  
requirements and any applicable building code requirements. In addition to any  
other warranties provided herein, Contractor hereby warrants its workmanship  
and materials in full accordance with Residential Warranty Corporation ("RWC")  
program and all applicable sections of the RWC Manual of Approved Standards,  
which Contractor has read, understands and by which Contractor agrees to be

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bound. All work not conforming to the aforementioned requirements shall be considered to be defective. If, within the time periods set forth in the foregoing warranty (or for a period of ten (10) years for latent defects), any of the Work is found to be defective or not in accordance with the terms of this Agreement, Contractor shall promptly correct such Work or replace or repair any defective material upon notice from Horton. Contractor agrees to make all repairs and correct such defects under the applicable warranty within twenty-four (24) hours of notice of such defect in an emergency (as determined by Horton in its sole discretion) and within seven days of notice of such defect on a non-emergency basis. Horton may, at its sole election, choose to repair defects in or replace warranted Work through its own employees or through the employees of a third party. Contractor agrees to reimburse Horton for all costs and expenses incurred in repairing or replacing warranted work. Reimbursement of these costs and expenses is due upon demand by Horton. The performance/fulfillment of any warranty repair responsibilities by Horton or any other third party will not affect, minimize or in any way obviate Contractor's warranty obligations, Contractor's indemnity provided for herein, or the ability of Horton to request Contractor to perform warranty services in the future. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment and shall furnish all certificates required by any municipality and/or VA and/or FHA. The foregoing is in addition to all other warranties provided by law or otherwise and not in limitation of periods of applicable statutes of limitation.

11. CONTRACTOR'S INDEMNITY AND WAIVER. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER, ITS PARENT CORPORATION, SUBSIDIARIES AND AFFILIATES, AND ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS, (HEREIN COLLECTIVELY REFERRED TO AS THE "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTIONS, SUITS, OR OTHER LITIGATION OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF AND ATTORNEYS' FEES), WHETHER ASSERTED BY THE HOMEOWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND PERMITTED SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF PROPERTY (INCLUDING THE LOSS OF USE THEREOF), (HEREIN COLLECTIVELY REFERRED TO AS "LOSS"), IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (I) A BREACH OF THE WARRANTIES, REPRESENTATIONS, OBLIGATIONS, AND COVENANTS PROVIDED HEREIN BY CONTRACTOR; (II) THE WORK PERFORMED OR TO BE PERFORMED BY CONTRACTOR OR CONTRACTOR'S PERSONNEL, AGENTS, SUPPLIERS, OR PERMITTED SUBCONTRACTORS; OR (III) ANY NEGLIGENT ACTION AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK, EVEN WHEN THE LOSS IS CAUSED BY THE FAULT OR NEGLIGENCE OF THE INDEMNITEE. ANY PAYMENTS BY CONTRACTOR UNDER THIS PARAGRAPH ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, AND PERMITTED SUBCONTRACTORS SHALL BE SOLELY

1 RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT, AND  
 2 HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE  
 3 INDEMNITEE WITH RESPECT TO ANY LOSS INVOLVING SUCH TOOLS  
 4 OR EQUIPMENT IN ANY WAY OCCURRING, INCIDENT TO, ARISING  
 5 OUT OF, OR IN CONNECTION WITH, THE WORK TO BE PERFORMED  
 6 HEREUNDER.

7 12. Insurance. Contractor agrees to carry: (a) Broad Form Commercial  
 8 General Liability Insurance on an Occurrence Form, naming the Indemnitee as an  
 9 additional insured with completed operations coverage and containing a per  
 10 occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an  
 11 aggregate limit of no less than One Million Dollars (\$1,000,000.00) protecting  
 12 against bodily injury, broad form property damage, and personal injury claims  
 13 arising from the exposures of: (i) premises-operations; (ii) products and  
 14 completed operations including materials designed, furnished, and/or modified in  
 15 any way by Contractor; (iii) independent subcontractors; (iv) contractual liability  
 16 risk covering the indemnity obligations set forth in this Agreement; and (v)  
 17 property damage resulting from explosion, collapse, or underground (x, c, u)  
 18 exposures; (b) Worker's Compensation Insurance that provides statutory benefits  
 19 and coverage such that Owner will have no liability to Contractor's personnel,  
 20 employees or agents; and (c) Professional Liability Insurance for Architects,  
 21 Engineers, Surveyors, and other Professional Service Organizations, that provides  
 22 a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an  
 23 aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against  
 24 faulty design and faulty professional judgment. Owner and Contractor  
 25 (collectively, the Parties) intend and agree that the coverage obtained by  
 26 Contractor naming Owner as an additional insured as set forth herein shall apply  
 27 on a primary basis with any insurance of Owner being excess coverage. Such  
 28 coverages will be carried absolute discretion. Such insurance shall provide for a  
 waiver of subrogation. Contractor shall provide evidence that such insurance is in  
 full force by furnishing Horton with a Certificate of Insurance, or certified copies  
 of the above policies. Each Certificate of Insurance or policy shall contain an  
 unqualified clause to the effect that the policy shall not be subject to cancellation,  
 nonrenewal, adverse change, or reduction of amounts of coverage without thirty  
 (30) days' prior written notice to Horton. The amounts and types of insurance set  
 forth herein are the minimums required by Horton and shall not be substituted for  
 an independent determination by Contractor of the amounts and types of  
 insurance which Contractor shall determine to be reasonably necessary to protect  
 itself and the Work required to be performed under this Agreement.  
 NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT  
 CONTRACTOR FAILS TO PROVIDE TO HORTON EVIDENCE OF SUCH  
 INSURANCE AS REQUIRED HEREUNDER, HORTON SHALL BE  
 ENTITLED, BUT SHALL NOT BE OBLIGATED, TO (A) WITHHOLD FROM  
 AMOUNTS OTHERWISE PAYABLE UNDER THIS AGREEMENT AN  
 AMOUNT, ESTABLISHED BY HORTON IN ITS SOLE AND ABSOLUTE  
 DISCRETION, TO PAY ITS COST OF INSURANCE ASSOCIATED WITH  
 CONTRACTOR'S PERSONNEL, EMPLOYEES OR AGENTS UNDER  
 HORTON'S WORKER'S COMPENSATION OR GENERAL LIABILITY  
 INSURANCE, AND TO PAY HORTON AN ADMINISTRATIVE FEE OR  
 PERMITTING SUCH COVERAGE, SUCH WITHHOLDING BEING  
 EXPRESSLY ACKNOWLEDGED AND AUTHORIZED BY  
 CONTRACTOR'S EXECUTION OF THIS AGREEMENT; OR (B) ACCEPT  
 FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT  
 PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS  
 OF ANY APPLICABLE STATUTES OR REGULATIONS.

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1           13.     Subcontractors. If Contractor subcontracts any of the Work to the  
2 extent permitted under this Agreement, Contractor guarantees that such third  
3 party shall indemnify Horton and meet all insurance requirements set forth herein.  
4 Prior to the subcontractor's commencement of the Work, Contractor shall obtain a  
5 signed agreement from such third party indemnifying Horton and provide to  
6 Horton evidence of satisfactory insurance. In addition, Contractor shall require  
7 that such supplier or subcontractor indemnify Horton from all losses arising from  
8 any materials or labor incorporated into the Work.

9           35.     DRH is an additional insured under various insurance policies issued by the  
10 carriers to American Asphalt & Grading, ANSE, Inc., Gibson Construction, Atrium Doors &  
11 Windows, Campbell Concrete of Nevada, Champion Masonry, Efficient Electric, Central Valley  
12 Insulation, Vegas General Construction, Reyburn Lawn and Landscape, Western States  
13 Contracting, OPM, Inc., Deck Systems of Nevada, Dupont Flooring, Firestop, Inc., Harrison  
14 Door Company, H&B Construction, Iron Specialists, Quality Wood Products, Rising Sun  
15 Plumbing, Silver State Fireplaces, Southern Nevada Paving, Nesco Manufacturing, Summit  
16 Drywall & Paint, Sunrise Mechanical, Bazooka Bub, Inc., Pools by Grube, Maytag, Western  
17 Shower Door, Deck Systems of Nevada and Sunstate Companies.

18           36.     The Contractors and the Defendant insurance carriers have thus promised,  
19 represented, warranted, and contractually agreed to defend, pay for the defense of and indemnify  
20 the Plaintiff DRH from the NRS Chapter 40.600 et seq. notice of constructional defects  
21 concerning the Court at Aliante Residential Development.

22           37.     Plaintiff DRH demanded, requested and tendered repeatedly to the Defendant  
23 insurance carriers for such defense. However, the Defendant insurance carriers have refused  
24 and/or not fully complied with their duties and obligations owed to Plaintiff DRH.

25           38.     Indeed, the Defendant insurance carriers herein, and each of them, have all relied  
26 upon standardized forms meant to appear as if they offer broad coverage to additional insureds,  
27 when in fact the carriers believe they do not afford coverage.

28           39.     Armed with this knowledge, the carriers and/or their agents solicited the  
subcontractors herein, claiming that the policies afford coverage for the types of claims which  
DRH required coverage for herein.

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1           40.     However, at the time of making those claims, the carriers, knowing the types of  
2 coverage with both DRH and the subcontractors required, still peddled their policies while  
3 knowing that they would not afford the coverage which was needed.

4           41.     Now, the defendant carriers are refusing to live up to their obligations to DRH as  
5 an additional insured as set forth in further detail below.

6                   **THE NATIONAL FIRE & MARINE POLICIES**

7           42.     National Fire & Marine issued multiple policies to Sunstate Companies, including  
8 policy numbers 72LPE679570 and 72LPE685075 naming DRH as an additional insured and  
9 agreeing to provide DRH commercial general liability insurance coverage.

10          43.     DRH tendered its defense to National Fire & Marine under each of these policies,  
11 as well as any other existing policies.

12          44.     However, on October 19, 2007, National Fire & Marine wrongfully denied  
13 DRH's tender of defense claiming that there was no "suit" even though a Chapter 40 Notice had  
14 been served upon DRH.

15          45.     National Fire & Marine issued multiple policies to OPM, Inc., including policy  
16 numbers LPN278490, 72LPE6888158, 72LP150181 and 72LPS000689 naming DRH as an  
17 additional insured and agreeing to provide DRH commercial general liability insurance coverage.

18          46.     DRH tendered its defense to National Fire & Marine under each of these policies,  
19 as well as any other existing policies.

20          47.     However, on June 13, 2008, National Fire & Marine wrongfully and unreasonably  
21 denied DRH's tender of defense based upon an ambiguous policy provision.

22          48.     National Fire & Marine issued multiple policies to Deck Systems of Nevada  
23 including policy numbers 72LP147320, 72LPN231640, 72LPN269656 and 72LPN308132  
24 naming DRH as an additional insured and agreeing to provide DRH commercial general liability  
25 insurance coverage.

26          49.     DRH tendered its defense to National Fire & Marine under each of these policies,  
27 as well as any other existing policies.

28     ///

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1           50.     However, National Fire & Marine wrongfully and unreasonably denied DRH's  
2 tender of defense based upon an ambiguous policy provision.

3           51.     National Fire & Marine issued multiple policies to Efficient Electric including  
4 policy number 72LPN251513 naming DRH as an additional insured and agreeing to provide  
5 DRH commercial general liability insurance coverage.

6           52.     DRH tendered its defense to National Fire & Marine under all policies of  
7 insurance issued to Efficient Electric.

8           53.     However, National Fire & Marine wrongfully and unreasonably denied DRH's  
9 tender of defense based upon an ambiguous policy provision.

10          54.     National Fire & Marine issued multiple policies to Firestop, Inc., including policy  
11 numbers 72LPE697124, 72LPE692140, 72LPE686875, 72LP148288, 72LPE697187 and  
12 72LPS004183 naming DRH as an additional insured and agreeing to provide DRH commercial  
13 general liability insurance coverage.

14          55.     DRH tendered its defense to National Fire & Marine under all policies of  
15 insurance issued to Firestop, Inc..

16          56.     However, National Fire & Marine wrongfully and unreasonably denied DRH's  
17 tender of defense based upon an ambiguous policy provision.

18          57.     National Fire & Marine issued multiple policies to Harrison Door Company  
19 including policy numbers 72LPN308049, 72LP157093 and 72LPS001651 naming DRH as an  
20 additional insured and agreeing to provide DRH commercial general liability insurance coverage.

21          58.     DRH tendered its defense to National Fire & Marine under all policies of  
22 insurance issued to Harrison Door Company.

23          59.     However, National Fire & Marine wrongfully and unreasonably denied DRH's  
24 tender of defense based upon an ambiguous policy provision.

25          60.     National Fire & Marine issued multiple policies to Quality Wood Products  
26 including policy numbers 72LPN307982, 72LPN269682 and 72LPE690136 naming DRH as an  
27 additional insured and agreeing to provide DRH commercial general liability insurance coverage.

28     ///

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1 61. DRH tendered its defense to National Fire & Marine under all policies of  
2 insurance issued to Quality Wood Products.

3 62. However, National Fire & Marine wrongfully and unreasonably denied DRH's  
4 tenders of defense based upon one or more ambiguous policy provisions.

5 63. National Fire & Marine issued multiple policies to Rising Sun Plumbing  
6 including policy numbers 72LPN307592, 72LPN278317, 72LP153721 and 72LPN396507  
7 naming DRH as an additional insured and agreeing to provide DRH commercial general liability  
8 insurance coverage.

9 64. DRH tendered its defense to National Fire & Marine under all policies of  
10 insurance issued to Rising Sun Plumbing.

11 65. However, National Fire & Marine wrongfully and unreasonably denied DRH's  
12 tenders of defense based upon one or more ambiguous policy provisions.

13 66. National Fire & Marine issued multiple policies to Silver State Fireplaces  
14 including policy numbers 72LPD686864, 72LPE692130, 72LPE697117 and 72LPE697182  
15 naming DRH as an additional insured and agreeing to provide DRH commercial general liability  
16 insurance coverage.

17 67. DRH tendered its defense to National Fire & Marine under all policies of  
18 insurance issued to Silver State Fireplaces.

19 68. However, National Fire & Marine wrongfully and unreasonably denied DRH's  
20 tenders of defense based upon one or more ambiguous policy provisions.

21 69. National Fire & Marine issued multiple policies to Summit Drywall & Paint  
22 including policy numbers 72LP153476 and 72LPN269562 naming DRH as an additional insured  
23 and agreeing to provide DRH commercial general liability insurance coverage.

24 70. DRH tendered its defense to National Fire & Marine under all policies of  
25 insurance issued to Summit Drywall & Paint.

26 71. However, National Fire & Marine wrongfully and unreasonably denied DRH's  
27 tenders of defense based upon one or more ambiguous policy provisions.

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1 72. National Fire & Marine issued multiple policies to Bazooka Bub, Inc. including  
2 policy numbers 72LP149329, 72LP155828, 72LPN278527, 72LPN357895, 72LPS000963,  
3 72LPS005054 and 72LPS008680 naming DRH as an additional insured and agreeing to provide  
4 DRH commercial general liability insurance coverage.

5 73. DRH tendered its defense to National Fire & Marine under all policies of  
6 insurance issued to Bazooka Bub, Inc.

7 74. However, National Fire & Marine wrongfully and unreasonably denied DRH's  
8 tenders of defense based upon one or more ambiguous policy provisions.

9 75. National Fire & Marine's handling of these claims was unreasonable, oppressive  
10 and malicious, violated Nevada law governing fair claims practices and warrants an award of  
11 punitive damages.

12 76. Additionally, National Fire & Marine's handling of all of these claims exhibits a  
13 pattern and practice of oppressive, unreasonable, and malicious conduct which warrants punitive  
14 damages.

#### 15 THE ARCH POLICIES

16 77. Arch issued policy numbers ZAGLB9017500 and 52UFP2016902 and other  
17 policies to Campbell Concrete of Nevada naming DRH as an additional insured and agreeing to  
18 provide DRH commercial general liability insurance coverage.

19 78. On multiple occasions DRH tendered its defense to Arch as an additional insured  
20 under all Campbell Concrete policies.

21 79. Arch has failed and refused to even acknowledge DRH's tenders of defense.

22 80. Arch issued policy numbers DCP000168400 and other policies to Summit  
23 Drywall & Paint naming DRH as an additional insured and agreeing to provide DRH commercial  
24 general liability insurance coverage.

25 81. DRH tendered its defense to Arch under any and all policies of insurance issued  
26 by Arch to Summit Paint & Drywall.

27 ///

28 ///



1           82.     However, Arch wrongfully and unreasonably disclaimed coverage for DRH,  
2     relying upon incorrect information and assumptions, as well as ambiguous and inapplicable  
3     policy provisions.

4           83.     Arch's handling of these claims was unreasonable, oppressive and malicious,  
5     violated Nevada law governing fair claims practices and warrants an award of punitive damages.

6                           THE AIG POLICIES

7           84.     AIG issued policy numbers GL9331776, GL9332386, GL9333003, GL7039521,  
8     7039521 and other policies to ANSE, Inc., naming DRH as an additional insured and agreeing to  
9     provide DRH commercial general liability insurance coverage.

10          85.     DRH has tendered its defense to AIG on multiple occasions, but AIG has refused  
11     to even acknowledge DRH's tender.

12          86.     AIG issued policy numbers 9332680, 9333358 and 1506633 and other policies to  
13     American Asphalt & Grading naming DRH as an additional insured and agreeing to provide  
14     DRH commercial general liability insurance coverage.

15          87.     DRH tendered its defense to AIG under all policies of insurance issued to  
16     American Asphalt & Grading.

17          88.     However, on February 28, 2007, AIG wrongfully and unreasonably denied  
18     DRH's tender of defense based upon ambiguous policy provisions and/or exclusions.

19          89.     AIG issued policy numbers 5446445 and other policies to Dupont Flooring  
20     naming DRH as an additional insured and agreeing to provide DRH commercial general liability  
21     insurance coverage.

22          90.     DRH has tendered its defense to AIG, but AIG has refused to even acknowledge  
23     DRH's tender.

24          91.     AIG issued policy number 1070434 and other policies to Efficient Electric  
25     naming DRH as an additional insured and agreeing to provide DRH commercial general liability  
26     insurance coverage.

27          92.     DRH has tendered its defense to AIG on multiple occasions, but AIG has refused  
28     to even acknowledge DRH's tender.

1           93.     AIG issued policy numbers 6761060 and 6761334 and other policies to Rising  
2 Sun Plumbing naming DRH as an additional insured and agreeing to provide DRH commercial  
3 general liability insurance coverage.

4           94.     DRH tendered its defense to AIG under all policies of insurance issued to Rising  
5 Sun Plumbing.

6           95.     However, on or about December 27, 2007, AIG wrongfully and unreasonably  
7 denied DRH's tender of defense based upon ambiguous policy provisions and/or exclusions.

8           96.     AIG issued policy number GL5760772, GL5751524 and GL5548747 and other  
9 policies to Southern Nevada Paving naming DRH as an additional insured and agreeing to  
10 provide DRH commercial general liability insurance coverage.

11           97.     DRH has tendered its defense to AIG, but AIG has refused to even acknowledge  
12 DRH's tender.

13           98.     AIG issued Lexington policy number 0995777, 1141653, 114080, AISLIC policy  
14 number 9332949 and Ins. Co. of PA policy number 43041769, 42031219, 47024067 and other  
15 policies to Sunrise Mechanical naming DRH as an additional insured and agreeing to provide  
16 DRH commercial general liability insurance coverage..

17           99.     DRH has tendered its defense to AIG, but AIG has failed and refused to either  
18 accept or deny any of DRH's tenders.

19           100.    AIG issued policy numbers 1070374 and other policies to Sunstate Companies  
20 naming DRH as an additional insured and agreeing to provide DRH commercial general liability  
21 insurance coverage.

22           101.    DRH tendered its defense to AIG under all policies of insurance issued to  
23 Sunstate Companies.

24           102.    However, on or about April 22, 2009, AIG wrongfully and unreasonably denied  
25 DRH's tender of defense based upon ambiguous and inapplicable policy provisions and/or  
26 exclusions.

27           103.    AIG's handling of these claims was unreasonable, oppressive and malicious,  
28 violated Nevada law governing fair claims practices and warrants an award of punitive damages.



## THE OLD REPUBLIC POLICIES

104. Old Republic issued policy number MWZY55525 and other policies to Central Valley Insulation, naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

105. DRH tendered its defense to Old Republic under all policies of insurance issued to Central Valley Insulation.

106. Old Republic initially agreed to participate in the defense of DRH.

107. Later, Old Republic stated that coverage was exhausted.

108. To date, Old Republic has failed and refused to fund the defense of DRH.

109. Old Republic's handling of these claims was unreasonable, oppressive and malicious, violated Nevada law governing fair claims practices and warrants an award of punitive damages.

## THE FIRST SPECIALTY POLICIES

110. First Specialty issued policy numbers IRG550241 and IRG550242 and other policies to Champion Masonry, naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

111. On several occasions, DRH tendered its defense to First Specialty under all policies of insurance issued to Champion Masonry.

112. However, First Specialty has failed and refused to either accept or deny DRH's tenders.

113. First Specialty issued policy numbers IRG62047 and IRE62048 and other policies to Efficient Electric, naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

114. DRH tendered its defense to First Specialty under all policies of insurance issued to Efficient Electric.

115. First Specialty wrongfully and unreasonably denied DRH's tender or tenders based upon inapplicable and ambiguous policy provisions and exclusions.

///

116. First Specialty issued policy number IRG57006 and other policies to Harrison Door Company, naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

117. DRH tendered its defense to First Specialty under all policies of insurance issued to Harrison Door Company.

118. First Specialty wrongfully and unreasonably denied DRH's tender or tenders based upon inapplicable and ambiguous policy provisions and exclusions.

119.

120. First Specialty's handling of these claims was unreasonable, oppressive and malicious, violated Nevada law governing fair claims practices and warrants an award of punitive damages.

#### THE LIBERTY MUTUAL POLICIES

121. Liberty Mutual issued policy number RG2C51004344186 and other policies to Efficient Electric naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

122. DRH tendered its defense to Liberty Mutual as an additional insured under all Efficient Electric policies.

123. Although Liberty Mutual agreed to participate in DRH's defense under the policy issued to Efficient Electric, Liberty Mutual has refused to pay any defense fees and costs associated with DRH's defense.

124. Liberty Mutual issued policy number YYJZ91433388025 and other policies to Reyburn Lawn and Landscape naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

125. DRH tendered its defense to Liberty Mutual as an additional insured under all Reyburn Lawn and Landscape policies.

126. Although Liberty Mutual agreed to participate in DRH's defense under the policy issued to Reyburn Lawn and Landscape, Liberty Mutual has refused to pay defense fees and costs associated with DRH's defense.

1 127. Liberty Mutual issued policy number RG2C51004344185 and other policies to  
2 Vegas General Construction naming DRH as an additional insured and agreeing to provide DRH  
3 commercial general liability insurance coverage.

4 128. DRH tendered its defense to Liberty Mutual as an additional insured under all  
5 Vegas General Construction policies.

6 129. Although Liberty Mutual agreed to participate in DRH's defense under the policy  
7 issued to Vegas General Construction, Liberty Mutual has refused to pay defense fees and costs  
8 associated with DRH's defense.

9 130. Liberty Mutual's handling of these claims was unreasonable, oppressive and  
10 malicious, violated Nevada law governing fair claims practices and warrants an award of  
11 punitive damages.

#### 12 THE TRAVELERS POLICIES

13 131. Travelers issued policy number DTC06099B138TIA05, DTC06099B138IND06  
14 and KK08301998 as well as other policies to Western States Contracting naming DRH as an  
15 additional insured and agreeing to provide DRH commercial general liability insurance coverage.

16 132. DRH tendered its defense to Travelers as an additional insured under all Western  
17 States Contracting policies.

18 133. Travelers ultimately agreed to participate in the defense of DRH, but has failed  
19 and refused to sufficiently fund its defense.

20 134. Travelers issued policy numbers KK08300837 and KC08300054 as well as other  
21 policies to Southern Nevada Paving naming DRH as an additional insured and agreeing to  
22 provide DRH commercial general liability insurance coverage.

23 135. However, Travelers wrongfully and unreasonably denied DRH's tender claiming  
24 that Southern Nevada Paving did not contract with DRH.

25 136. After providing Travelers a copy of the contract and refuting their position,  
26 Travelers failed and refused to respond to DRH's retender.

27 137. Travelers' handling of this claim was unreasonable, oppressive and malicious,  
28 violated Nevada law governing fair claims practices and warrants an award of punitive damages.

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### THE ZURICH POLICIES

138. Zurich issued policy number GLO929772005 as well as other policies to Atrium Doors & Windows naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

139. DRH tendered its defense to Zurich as an additional insured under all Atrium Doors and Windows' policies.

140. Zurich ultimately agreed to participate in the defense of DRH, but has failed and refused to sufficiently fund its defense.

141. Zurich issued policy number CPO3697430 as well as other policies to Gibson Construction naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

142. DRH tendered its defense to Zurich as an additional insured under all Gibson Construction policies.

143. However, Zurich has failed and refused to even acknowledge DRH's tender.

144. Zurich issued policy numbers TCS6015602, TCS6015600 and TCS6015601 as well as other policies to Western Shower Door naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

145. Zurich has acknowledged DRH's tenders, but has refused to author a formal coverage opinion or otherwise accept or reject DRH's pleas to Zurich for a defense.

146. Zurich has intentionally taken unreasonable positions including requiring that its primary insured pay the SIR only so that Zurich can avoid having to participate in the defense of DRH, as well as other positions which are unreasonable, malicious and oppressive

147. Zurich's handling of these claims was unreasonable, oppressive and malicious, violated Nevada law governing fair claims practices and warrants an award of punitive damages.

### THE ILLINOIS UNION POLICIES

148. Illinois Union issued policy numbers XSL620587180, CGOG1807235A and HDOG180725567 and other policies to Vegas General naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

1 149. DRH has tendered its defense to Illinois Union on multiple occasions, but Illinois  
2 Union has refused to either accept or deny DRH's tender.

3 150. Illinois Union's handling of these claims was unreasonable, oppressive and  
4 malicious, violated Nevada law governing fair claims practices and warrants an award of  
5 punitive damages.

6 **THE WESTCHESTER POLICIES**

7 151. Westchester issued policy numbers GLW777287, GLW82924 and  
8 G2198209A001 and other policies to H&B Construction naming DRH as an additional insured  
9 and agreeing to provide DRH commercial general liability insurance coverage.

10 152. DRH has tendered its defense to Westchester, but Westchester has refused to  
11 acknowledge DRH's tender or to either accept or deny DRH's tender.

12 153. Westchester's handling of these claims was unreasonable, oppressive and  
13 malicious, violated Nevada law governing fair claims practices and warrants an award of  
14 punitive damages.

15 **THE AMERICAN SAFETY POLICIES**

16 154. American Safety issued policy numbers ESL0063400502 and ESL0063400401  
17 and other policies to Iron Specialists, naming DRH as an additional insured and agreeing to  
18 provide DRH commercial general liability insurance coverage.

19 155. DRH tendered its defense to American Safety under all policies of insurance  
20 issued to Iron Specialists.

21 156. American Safety wrongfully and unreasonably denied DRH's tender or tenders  
22 based upon inapplicable and ambiguous policy provisions and exclusions.

23 157. American Safety's handling of these claims was unreasonable, oppressive and  
24 malicious, violated Nevada law governing fair claims practices and warrants an award of  
25 punitive damages.

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**THE BURLINGTON POLICIES**

158. Burlington issued policy number HGL0002441 and other policies to Iron Specialists, naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

159. DRH tendered its defense to Burlington under all policies of insurance issued to Iron Specialists.

160. Burlington wrongfully and unreasonably denied DRH's tender or tenders based upon inapplicable and ambiguous policy provisions and exclusions.

161. Burlington's handling of these claims was unreasonable, oppressive and malicious, violated Nevada law governing fair claims practices and warrants an award of punitive damages.

**THE AMERICAN & FOREIGN POLICIES**

162. American & Foreign issued policy number ASP269860 and other policies to Reyburn Lawn and Landscape, naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

163. DRH tendered its defense to American & Foreign under all policies of insurance issued to Reyburn Lawn and Landscape.

164. American & Foreign failed and refused to either accept or deny DRH's tender or tenders.

165. American & Foreign's handling of these claims was unreasonable, oppressive and malicious, violated Nevada law governing fair claims practices and warrants an award of punitive damages.

**THE CINCINNATI POLICIES**

166. Cincinnati issued policy number 05CAP5495020 and other policies to Nesco Manufacturing, naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

167. DRH tendered its defense to Cincinnati under all policies of insurance issued to Nesco Manufacturing.

1 168. Cincinnati wrongfully and unreasonably denied DRH's tender or tenders claiming  
2 that there was no resultant damage from Nesco Manufacturing's scope of work when there was  
3 resultant damage.

4 169. Cincinnati's handling of these claims was unreasonable, oppressive and  
5 malicious, violated Nevada law governing fair claims practices and warrants an award of  
6 punitive damages.

7 **THE SCOTTSDALE POLICIES**

8 170. Scottsdale issued policy number CLS0873372, CLS1039687 and CLS1119250  
9 and other policies to Pools by Grube, naming DRH as an additional insured and agreeing to  
10 provide DRH commercial general liability insurance coverage.

11 171. DRH tendered its defense to Scottsdale under all policies of insurance issued to  
12 Pools by Grube.

13 172. Scottsdale wrongfully and unreasonably denied DRH's tender or tenders based  
14 upon incorrect and unreasonable assumptions and ambiguous policy language.

15 173. Scottsdale's handling of these claims was unreasonable, oppressive and  
16 malicious, violated Nevada law governing fair claims practices and warrants an award of  
17 punitive damages.

18 **THE ACE POLICIES**

19 174. Ace issued policy number G21808672 and other policies to Maytag and/or  
20 Whirlpool, naming DRH as an additional insured and agreeing to provide DRH commercial  
21 general liability insurance coverage.

22 175. DRH tendered its defense to Ace on multiple occasions under all policies of  
23 insurance issued to Maytag and/or Whirlpool.

24 176. Ace has failed to even acknowledge DRH's tenders and has ignored its  
25 obligations to DRH as its insured.

26 177. Ace's handling of these claims was unreasonable, oppressive and malicious,  
27 violated Nevada law governing fair claims practices and warrants an award of punitive damages.

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**THE FIRST MERCURY POLICIES**

178. First Mercury issued policy number FMTX001931, FMTX002713 and other policies to Deck Systems of Nevada, naming DRH as an additional insured and agreeing to provide DRH commercial general liability insurance coverage.

179. DRH tendered its defense to First Mercury on multiple occasions under all policies of insurance issued to Deck Systems of Nevada.

180. First Mercury has denied DRH's tenders without a reasonable basis to do so by relying upon intentionally ambiguous policy provisions designed to look like they provide coverage when in fact they do not.

181. First Mercury's handling of these claims was unreasonable, oppressive and malicious, violated Nevada law governing fair claims practices and warrants an award of punitive damages.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Contract—against all Defendants)**

182. DRH realleges and incorporates by reference the prior paragraphs of this Complaint as though fully set forth herein.

183. DRH entered into one or more insurance contracts with the carriers by virtue of the policies issued which name DRH as an additional insured.

184. The carriers breached the policies when they denied DRH's tender or accepted DRH's tender but refused to fully participate in the defense of DRH.

185. As a direct and proximate cause of the carriers' breaches, DRH has been damaged in an amount to be proven at trial.

186. DRH has been required to obtain the services of Marquis & Aurbach to prosecute this claim, and is entitled to recover reasonable attorney fees and other costs incurred in this litigation as special damages, in addition to any other relief to which it may be entitled.

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Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

**SECOND CLAIM FOR RELIEF**  
**(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing—against all Defendants)**

187. DRH realleges and incorporates by reference the prior paragraphs of this Complaint as though fully set forth herein.

188. A covenant of good faith and fair dealing is implied into every contract construed pursuant to Nevada law, including the policies mentioned hereinabove.

189. The carriers breached the implied covenant of good faith and fair dealing in various ways, including but not limited to denying DRH's claims, not fully funding DRH's defense and as such, performed in a manner unfaithful to the terms of the policies.

190. As a direct and proximate cause of the carriers' breaches, DRH has been damaged in an amount to be proven at trial.

191. By its actions, the carriers are guilty of oppression, fraud and/or malice, expressed or implied.

192. Accordingly, in addition to compensatory damages, DRH may recover punitive damages for the sake of example and by way of punishing the carriers.

193. DRH has been required to obtain the services of Marquis & Aurbach to prosecute this claim, and is entitled to recover reasonable attorney fees and other costs incurred in this litigation as special damages, in addition to any other relief to which it may be entitled.

**THIRD CLAIM FOR RELIEF**  
**(Violations of NRS 686A.310--against all Defendants)**

194. DRH realleges and incorporates by reference the prior paragraphs of this Complaint as though fully set forth herein.

195. At all times relevant and material hereto, NRS 686A.310 was in full force and effect.

196. The carriers violated NRS 686A.310 in various ways, including, but not limited to:

a. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

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1 b. Failing to adopt and implement reasonable standards for the prompt investigation  
2 and processing of claims arising under insurance policies;

3 c. Failing to affirm or deny coverage of claims within a reasonable time after proof  
4 of loss requirements have been completed and submitted by the insured;

5 d. Failing to effectuate prompt, fair and equitable settlements of claims in which  
6 liability of the insurer has become reasonably clear;

7 e. Compelling insureds to institute litigation to recover amounts due under an  
8 insurance policy by offering substantially less than the amounts ultimately recovered in actions  
9 brought by such insureds, when the insureds have made claims for amounts reasonably similar to  
10 the amounts ultimately recovered;

11 f. Failing to settle claims promptly, where liability has become reasonably clear,  
12 under one portion of the insurance policy coverage in order to influence settlements under other  
13 portions of the insurance policy coverage; and/or

14 g. Failing to provide promptly to an insured a reasonable explanation of the basis in  
15 the insurance policy, with respect to the facts of the insured's claim and the applicable law, for  
16 the denial of his claim or for an offer to settle or compromise his claim.

17 h. Unreasonably withdrawing defense and coverage of certain claims less than a  
18 week before trial of all claims was scheduled to commence.

19 i. Compromising the insured's claims against third parties for which the insurers  
20 denied and withdraw defense and coverage.

21 197. As a direct and proximate cause of the carriers' breaches, DRH has been damaged  
22 in an amount to be proven at trial.

23 198. By their actions, the carriers are guilty of oppression, fraud and/or malice, express  
24 or implied.

25 199. Accordingly, in addition to compensatory damages, DRH may recover punitive  
26 damages for the sake of example and by way of punishing the carriers.

27 ///

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1           200. DRH has been required to obtain the services of Marquis & Aurbach to prosecute  
2 this claim, and is entitled to recover reasonable attorney fees and other costs incurred in this  
3 litigation as special damages, in addition to any other relief to which it may be entitled.

4                           **FOURTH CLAIM FOR RELIEF**  
5                           **(Declaratory Relief—against all Defendants)**

6           201. DRH realleges and incorporates by reference the prior paragraphs of this  
7 Complaint as though fully set forth herein.

8           202. There exists between DRH and the carriers a justiciable controversy regarding the  
9 rights and obligations of the parties under the respective policies, specifically, but not limited to,  
10 whether the carriers should be defending DRH.

11           203. DRH seeks a declaratory judgment to resolve this controversy.

12           204. This action presents a justiciable controversy related to the obligations, rights, and  
13 limitations to the parties under the respective policies.

14           205. DRH and the carriers have adverse interests in this matter.

15           206. DRH asserts a legally protectable interest that is ripe for determination.

16           207. DRH has been required to obtain the services of Marquis & Aurbach to prosecute  
17 this claim, and is entitled to recover reasonable attorney fees and other costs incurred in this  
18 litigation as special damages, in addition to any other relief to which it may be entitled.

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**PRAYER FOR RELIEF**

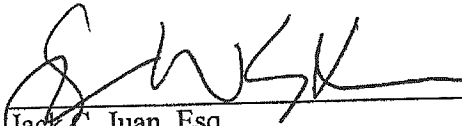
WHEREFORE, the Plaintiff, DRH, prays for judgment as follows:

1. For general damages in excess of \$10,000 for each claim for relief;
2. For special damages determined at the time of trial;
3. For punitive damages;
4. For a judicial declaration as to the rights, obligations, and liabilities of the parties to the respective policies of insurance;
5. For an award of reasonable attorney fees and costs of suit incurred herein; and
6. For such other and further relief as the Court may deem just and proper.

Dated this 10 day of December, 2010.

MARQUIS & AURBACH

By

  
\_\_\_\_\_  
Jack C. Juan, Esq.  
Nevada Bar No. 6367  
Shane W. Clayton, Esq.  
Nevada Bar No. 8783  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorneys for Plaintiff

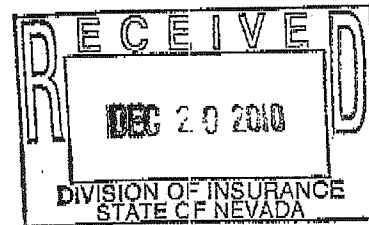
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# **Exhibit D**

1 **Marquis & Aurbach**  
 2 **JACK C. JUAN, ESQ.**  
 3 Nevada Bar No. 6367  
 4 **SHANE W. CLAYTON, ESQ.**  
 5 Nevada Bar No. 8783  
 6 10001 Park Run Drive  
 7 Las Vegas, Nevada 89145  
 8 Telephone: (702) 382-0711  
 9 Facsimile: (702) 382-5816  
 10 [jjuan@marquisaurbach.com](mailto:jjuan@marquisaurbach.com)  
 11 [sclayton@marquisaurbach.com](mailto:sclayton@marquisaurbach.com)  
 12 Attorneys for Plaintiff



13 **DISTRICT COURT**  
 14 **CLARK COUNTY, NEVADA**

15 D.R. HORTON, INC., a Delaware corporation,

16 Plaintiff,

Case No.:  
 Dept. No.:

17 vs.

18 **INITIAL APPEARANCE FEE**  
 19 **DISCLOSURE**

20 **ARBITRATION EXEMPTION**  
 21 **REQUESTED: DECLARATORY RELIEF**  
 22 **SOUGHT**

23 **LIBERTY MUTUAL FIRE INSURANCE**  
 24 **COMPANY, a foreign corporation; NATIONAL**  
 25 **FIRE & MARINE INSURANCE COMPANY, a**  
 26 **foreign corporation; WAUSAU BUSINESS**  
 27 **INSURANCE, a foreign corporation;**  
 28 **TRAVELERS INDEMNITY COMPANY, a**  
 29 **foreign corporation; ARCH EXCESS AND**  
 30 **SURPLUS INSURANCE COMPANY, a foreign**  
 31 **corporation; AMERICAN HOME ASSURANCE**  
 32 **COMPANY, a foreign corporation;**  
 33 **COMMERCE AND INDUSTRY INSURANCE**  
 34 **COMPANY, a foreign corporation; ZURICH**  
 35 **AMERICAN INSURANCE COMPANY;**  
 36 **ILLINOIS UNION INSURANCE COMPANY, a**  
 37 **foreign corporation; OLD REPUBLIC**  
 38 **INSURANCE COMPANY, a foreign**  
 39 **corporation; FIRST SPECIALTY INSURANCE**  
 40 **COMPANY, a foreign corporation;**  
 41 **LEXINGTON INSURANCE COMPANY, a**  
 42 **foreign corporation; WESTCHESTER**  
 43 **SURPLUS LINES INSURANCE COMPANY, a**  
 44 **foreign corporation; AMERICAN SAFETY**  
 45 **INDEMNITY COMPANY, a foreign**  
 46 **corporation; BURLINGTON INSURANCE**  
 47 **COMPANY, a foreign corporation; AMERICAN**  
 48 **& FOREIGN INSURANCE COMPANY, a**  
 49 **foreign corporation; CINCINNATI**  
 50 **INSURANCE COMPANY, a foreign**  
 51 **corporation; ARCH SPECIALTY INSURANCE**  
 52 **COMPANY, a foreign corporation; ST. PAUL**  
 53 **FIRE & MARINE INSURANCE COMPANY, a**

**MARQUIS & AURBACH**

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1 foreign corporation; SCOTTSDALE  
2 INSURANCE, a foreign corporation; ACE  
3 AMERICAN INSURANCE COMPANY, a  
4 foreign corporation; FIRST MERCURY  
INSURANCE COMPANY, a foreign  
corporation; DOES I - X; ROE  
CORPORATIONS I - X,

5 Defendants.

6  
7 **INITIAL APPEARANCE FEE DISCLOSURE**

8 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for  
9 parties appearing in the above-entitled action as indicated below:

10 D.R. Horton, Inc., Plaintiff.....

☒ \$270.00  
\$270.00

11 TOTAL REMITTED.....

12 Dated this 10 day of December, 2010.

13 MARQUIS & AURBACH

14 By

15 

16 Jack C. Juan, Esq.  
17 Nevada Bar No. 6367  
Shane W. Clayton, Esq.  
18 Nevada Bar No. 8783  
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